

FCC MAIL SECTION

DOCKET FILE COPY ORIGINAL

MAY 20 8 12 AM '97

Federal Communications Commission

DA 97-961

DISPATCHED BY

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
Amendment of Section 73.202(b), ) MM Docket No. 97-130  
Table of Allotments, ) RM-8751  
FM Broadcast Stations. )  
(Galesburg, Illinois and Ottumwa, Iowa) )

NOTICE OF PROPOSED RULE MAKING

Adopted: May 7, 1997;

Released: May 16, 1997

Comment Date: July 7, 1997

Reply Comment Date: July 22, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Northern Broadcast Group ("petitioner"), licensee of Station WGBQ(FM), Channel 224A, Galesburg, Illinois, proposing the substitution of Channel 224B1 for Channel 224A at Galesburg, and the modification of Station WGBQ(FM)'s license accordingly. To accommodate the upgrade, petitioner also proposes the modification of the allotment reference coordinates for vacant Channel 224C3 at Ottumwa, Iowa. Petitioner states its intention to apply for the channel, if allotted.

2. In support of its proposal, petitioner states that the proposed upgrade is consistent with the Commission's rules and policies. Petitioner further states that modifying the reference coordinates for the allotment site for vacant Channel 224C3, reserved for Station KTWA(FM) at Ottumwa, Iowa, will not adversely affect the station. Petitioner contends that the proposal is in the public interest and will enable Station WGBQ(FM) to provide significant service improvements to Galesburg, Illinois.

3. We believe the proposed upgrade warrants consideration since the allotment of Channel 224B1 at Galesburg, Illinois, with the modification of the reference coordinates for vacant Channel 224C3 at Ottumwa, Iowa, would enable Station WGBQ(FM) to improve its facilities and

expand its service area. An engineering analysis has determined that Channel 224B1 can be allotted to Galesburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 kilometers (8.3 miles) northwest to accommodate petitioner's requested site.<sup>1</sup> Additionally, the allotment reference coordinates for now vacant and unapplied-for Channel 224C3 at Ottumwa, Iowa, can be modified consistent with the Commission's spacing requirements with a site restriction of 12.2 kilometers (7.6 miles) west.<sup>2</sup> We shall also propose to modify the license for Station WGBQ(FM) to specify operation on Channel 224B1 in lieu of Channel 224A at Galesburg, Illinois. In accordance with Section 1.420(g)(3) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 224B1 at Galesburg, Illinois, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

4. Petitioner is requested to submit engineering analysis on the size and number of people in the gain area created by this upgrade, as well as the area and population of any possible loss area. Likewise, once Station KTW(A)(FM)'s application is placed on Public Notice, we request engineering data from Station KTW(A)(FM) on the comparative attributes of its upgrade proposal.

---

<sup>1</sup>The coordinates for Channel 224B1 at Galesburg are North Latitude 41-02-50 and West Longitude 90-27-30. We note that the reference coordinates are short-spaced to the application site for Station KTW(A)(FM), Channel 224C2, Ottumwa, Iowa. Pursuant to a rulemaking petition, Station KTW(A)(FM)'s license was modified to specify operation on Channel 224C3 in lieu of Channel 224A at Ottumwa pursuant to MM Docket No. 89-365. See 5 FCC Rcd 4685 (1990). However, a record search revealed that Station KTW(A)(FM)'s construction permit (File No. BPH-9010191A) for Channel 224C3 at Ottumwa expired on August 26, 1992, and was forfeited and cancelled on November 18, 1992. On March 22, 1996, Station KTW(A)(FM) filed a one-step upgrade application (File No. BPH-9603221C) for Class C2 facilities at its presently licensed site. See Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application ("Modifications by Application"), 8 FCC Rcd 4735 (1993). Station KTW(A)(FM)'s upgrade application for Channel 224C2 at Ottumwa was filed after the instant rulemaking petition, which was submitted on January 16, 1996, and as a result, they are mutually exclusive. In an effort to resolve the conflict, an engineering analysis was conducted which determined that the conflict cannot be resolved by imposing a site restriction or allotting an alternate channel at Galesburg. Therefore, the Ottumwa upgrade application, unless amended, will be treated as a counterproposal and resolved in the context of this proceeding. See Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments, 7 FCC Rcd 4917, at n.18 (1992), recon. granted in part, 8 FCC Rcd 4743 (1993); and Modifications by Application, *supra*, at paras. 17 and 18. Accordingly, Station KTW(A)(FM)'s one-step upgrade application for Channel 224C2 at Ottumwa, Iowa, will be placed on Public Notice at a later date. We will serve the licensee of Station KTW(A)(FM) with a copy of this Notice.

<sup>2</sup>The modified coordinates for vacant Channel 224C3 at Ottumwa are North Latitude 41-00-00 and West Longitude 92-33-10.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Galesburg, Illinois	224A, 235B	224B1, 235B

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before July 7, 1997, and reply comments on or before July 22, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Dawn M. Sciarrino  
Fisher, Wayland, Cooper, Leader  
& Zaragoza, L.L.P.  
2001 Pennsylvania Ave., NW., Suite 400  
Washington, DC 20006-1851  
(Counsel for Petitioner)

8. IT IS ORDERED, That the Secretary shall send a copy of this Notice of Proposed Rules Making by Certified Mail, Return Receipt Requested, to the licensee, as follows:

Gillbro Communications Ltd. Partnership  
209 S. Market Street  
Ottumwa, Iowa 52501  
(Licensee of Station KTWB(FM))

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603

and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

---

**APPENDIX**

MM Docket No. 97-130  
RM-8751

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the

person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (~~See~~ Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.